be a re-trial at least, he must himself have realised that the dice were heavily loaded against him. In all the circumstances, I see no reason to interfere with the sound conclusion reached by the learned District Judge and the appeal is accordingly dismissed with costs. I also order that the sum of $150 deposited by way of security for costs be paid forthwith to the respondent's solicitors and brought into account in the computation of costs payable by the appellants.

Appeal dismissed.

Solicitors: *Muthu & Co.; Murugason & Co.*

KARTHAK v. DAMAI

[O. C. J. (Suffian J.) October 17, 1962]

[Alor Star — Civil Suit No. 96 of 1961]

Defamation — Slander — Privilege absolute or qualified.

Evidence — Gurkha Officers Committee or Panchayat — Whether "service court" or a "service authority" — Visiting Forces (British Commonwealth) Enactment, Johore, No. 2 of 1941, s.3(i) — Queen's Regulations for the Army, 1961, para. 1601 — Discussions on.

The plaintiff was an army school teacher and the defendant was a pupil in the army school. The defendant alleged that the plaintiff had had sexual intercourse with her as a result of which she was pregnant. The army authorities held an enquiry at which the plaintiff was refused an opportunity to confront the defendant in open court. He was dismissed from the army teaching service and brought this action to clear his name. The defendant pleaded privilege.

Held: dismissing the action, (1) the defence of absolute privilege failed;

(2) the defendant being a pupil in the army school had an interest or duty, if not legal, certainly social and moral to voice her accusations to the army authorities, who were obliged to investigate into her complaints. As the plaintiff was in the employment of the army the occasion of the publication of this defamatory accusation by the defendant was privileged;

(3) the plaintiff failed to prove malice.

Cases referred to:—

(1) *Jones* v. *Jones* [1916] 2 A.C. 481.

(2) *Dawkins* v. *Lord Rokeby* (1874-5), L.R. 7 E. & I. App. C. p. 744.

(3) *Addis* v. *Crocker* [1960] 3 W.L.R. 339.

(4) *Adam* v. *Ward* [1917] A.C. 309.

(5) *Macintosh & Anor.* v. *Dun & Ors.* [1908] A.C. 390.

(6) *London Association for Protection of Trade & Anor.* v. *Greenlands Ltd.* [1916] 2 A.C. 15.

The following case was also cited in argument: *Coopang Chetty* v. *Veera Padiachee*, 4 Ky. 364.

CIVIL SUIT.

Jag-Jit Singh for the plaintiff.

Y. S. Chong for the defendant.

Cur. Adv. Vult.

Suffian J.: The plaintiff, a Sikkimese, was a teacher with the Brigade of Gurkhas in this country. On 12th October, 1960, he went to India on leave from Kluang. On 24th February, 1961, he returned from India. That day he was summoned before an officer. He went and saw a Gurkha Major, Lal Bahadur Thapa. There were present then about 11 or 12 officers. An officer pointed to a girl, the defendant, and said that she had accused the plaintiff of having had intercourse with her in his kitchen the day before he had left for India and as a result she was now pregnant. Later that day a Panchayat was held to ascertain the truth of her allegations. There the girl repeated her allegations against the plaintiff. Following the finding of the Panchayat the plaintiff was dismissed summarily by the General Officer Commanding the Brigade of Gurkhas and was ordered to return to India at his own expense within 12 days. He appealed but unsuccessfully.

After correspondence with the army authorities, the plaintiff on the 11th October, 1961 filed this suit, complaining that the words:

"Karthak had intercourse with me in his kitchen one day before he left for India. As a result I am now pregnant."

uttered by the defendant at the Gurkha Officers' Mess, Kluang, on the 24th February, 1961, before Major Lal Bahadur, two European officers and about seven or eight other Gurkha officers were defamatory of the plaintiff, accusing him:

(a) of being a person unfit to be a Headmaster and/or school teacher in any school;

(b) of rape.

He said that by reason of the defamation he had been brought into public hatred, scandal and contempt and suffered damage to himself. The plaintiff claimed an injunction against the defendant. He also asked for damages for slander and costs. Because of this suit the Army authorities permitted him to remain in the country until after its conclusion, the plaintiff living with his wife who was and still is a teacher employed by the Forces.

I do not think that I shall ever know the whole truth about this case, for, unfortunately, by the time of the hearing, the defendant, an infant, had with her guardian *ad litem* left the country, apparently for good.

Be that as it may, it is quite clear that at the material time the defendant was about 19 years old and was a pupil at the plaintiff's school and that she did utter the words complained of.

There were many defences pleaded. At the hearing justification was abandoned as the defendant was not available to give evidence. Another defence was that the words complained of were not actionable without proof of special damage. Before the trial the defendant's counsel gave notice that he would cite *Jones* v. *Jones* (1) presumably in support of this defence, but at the hearing he said that if the plaintiff proved that the words were published he would concede that they were actionable *per se* without proof of special damages. In writing my judgment I came to the conclusion that publication had been proved and I proceeded on the basis that the words published were defamatory of the plaintiff.

At the hearing only one defence was proceeded with, privilege, it being argued that either absolute or qualified privilege applied.

Absolute privilege: Two cases were relied on: *Dawkins* v. *Lord Rokeby* [2] and *Addis* v. *Crocker* [3]. It is for the defendant to prove facts to found this defence of absolute privilege. If the plaintiff was a member of a "visiting force" and if the Panchayat was a "service court" or a "service authority", then by virtue of section 3(i) of the Visiting Forces (British Commonwealth) Enactment, Johore, No. 2 of 1941, in force at the material time, and on the authority of *Dawkins* case absolute privilege would apply.

Paragraph 1601 of the Queen's Regulations for the Army, 1961, provides:—

"Standing Orders may be issued in relation to the various corps. The O.C., a formation, station, unit, or any body of troops may also issue Standing Orders relating to his command."

The Queen's Regulations were approved by Her Britannic Majesty the Queen. A copy printed by Her Majesty's Stationery Office was made available to me after the conclusion of the case. By virtue of section 78 of the Evidence Ordinance, I took judicial notice of this official copy.

In his closing address Mr. Chong, for the defendant, produced a cyclostyled copy of a document entitled "Standing Orders, 10th Princess Mary's Own Gurkha Rifles". Paragraphs 686 and 687 thereof provide for the establishment of a Gurkha Officers Committee or Panchayat to deal with "disputes about the men's private affairs and particularly disputes originating in the family lines or connected with the marriage laws of Nepal." As to these Standing Orders I agree with Mr. Jag-Jit Singh's submission that: (a) as they were not admitted they should have been proved, they have not been proved, and accordingly I cannot take judicial notice of them; (b) in any event, the Standing Orders purported to apply to the 10th Princess Mary's Own Gurkha Rifles, while the unit here involved is the 1/6 Q.E.O. Gurkha Rifles; and (c) it has not been proved that the plaintiff was subject to military law, he asserting he was a mere civilian and no evidence to the contrary being elicited in cross-examination or called by the defence.

Accordingly I hold that the defence of absolute privilege fails.

As to *qualified privilege*, one case was cited, *Adam* v. *Ward* [4] and I also referred to *Macintosh & Anor.* v. *Dun & Ors.* [5] and *London Association for Protection of Trade & Anor.* v. *Greenlands, Ltd.* [6]. The principle was clearly stated by Lord Dunedin in *Adam* v. *Ward* [4] at page 326 as follows:—

"Malice, which is of the essence of libel, is presumed from defamatory words. Privilege destroys that presumption. But the place of the implied malice which is gone may be taken by express malice which may be proved. It may be proved either extrinsically or intrinsically of the document....."

The same principle of course applies to slander.

Speaking of *qualified privilege*, Lord Atkinson in the same case said at page 334:

"..... A privileged occasion is, in reference to qualified privilege, an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential."

Here I find from the plaintiff's own evidence and from the agreed bundle of correspondence that the defendant accused the plaintiff of having had sexual intercourse with her making her pregnant. Did she have an interest or duty, legal, social or moral, in making this accusation? In the social circumstances prevailing in this country where there is a strong prejudice against marrying a girl who has been tampered with and where in view of the comparatively small population everybody knows everybody else's affairs, there is no doubt that the making of such an accusation even if substantiated is attended by grave dangers to the accuser. But nevertheless in my view a girl who thinks that her honour has been involved has an interest or a duty, if not legal, certainly social and moral, to voice her accusation, and if she attends a school run by the Army who better to voice her accusation to than the Army authorities? On receipt of her complaints, what alternatives have the Army authorities than to hear them and investigate into them, particularly if the person accused is in their employment, albeit a mere civilian not subject to military law? In view of this I hold that the occasion of the publication of this defamatory accusation by the defendant was privileged.

That being so, it was for the plaintiff to prove malice. He pleaded malice, but considering his own evidence and the matters contained in the agreed bundle of correspondence, I find that he has failed to prove this. In considering this matter, I take into account the difficulty he was put into by the absence of the defendant whom he was unable to cross-examine.

Accordingly in face of the evidence before me I would dismiss the plaintiff's claim with costs.

Before departing from this case, I would like to make the following observations. The plaintiff had been a teacher of many years' experience who according to him had had and still has a good character and for him it was a serious thing to be accused of taking liberties with a young girl pupil of his. At the Panchayat he asked to be confronted by the girl in an open court of law. That was not done, and I say this without in any way criticising the Army authorities, and so the plaintiff brought this action to clear his name. In answer to his statement of claim the defendant pleaded justification but at the trial she was absent and her counsel (as already stated) abandoned this defence. In the event the plaintiff was denied the opportunity of challenging the truth of the accusation against him, which must be a source of great disappointment to him.

In finding the defendant did publish the slander, I do not say that there was any truth in it, for I am entitled to proceed on the basis that —

" ..... a person making a communication on a privileged occasion has not, in the first instance and as a condition of immunity, to prove affirmatively that he honestly believed the statement made to be true, his *bona fides* being in such a case always presumed....." (*per* Lord Atkinson in *Adam* v. *Ward* (4) at page 334).

I hope that this is some consolation to the plaintiff.

Claim dismissed.

Solicitors: *Jag-Jit Singh; Shearn, Delamore & Co.*

BAKER v. ASIA MOTOR CO. LTD.

[O. C. J. (Buttrose J.) October 19, 1962]

[Singapore — Civil Suit No. 311 of 1962]

Contract — Representation — Whether term of contract — Whether representation fraudulent — Measure of damages.

Contract — Sale of car — Misrepresentation of year of manufacture — Entries in registration book that should have put defendants on enquiry — Whether defendants' representation of year of manufacture amounted to fraudulent misrepresentation — Damages.

The plaintiff who had purchased a second-hand 1956 Fiat from the defendants approached them with a view to effecting an exchange as the Fiat gave considerable trouble. He was shown a list of second-hand cars by the defendants. Among the cars were two Humber Hawks. The defendants' salesman pointed to one of the Humber Hawks and said that he recommended that car and that it was a much better and newer car than the Fiat. After a trial run the plaintiff on request was shown the registration book of the car. At the top of the card appeared the words "Late T.5364" which would indicate to anyone in the motor trade but not the plaintiff that the car was not a 1958 model and had previously been registered in the Federation of Malaya. The plaintiff then agreed to buy the car for $2,400 and signed a formal confirmation of purchase incompletely filled in and not signed by the defendants. Subsequently on December 31, 1960 a hire-purchase agreement in respect of the car was executed describing "the goods" as a 1958 Humber Hawk Saloon. Some time later on discovering that the car was a 1953 model he brought an action against the defendants for damages for breach of contract or alternatively damages for fraudulent misrepresentation.

Held: (1) as the agreement was for the supply of a 1958 model and the car supplied was a 1953 model there was an express breach of the term of the contract;

(2) the representation made by the defendants was fraudulent because it was made without belief in its truth, recklessly, careless whether it be true or false;

(3) the plaintiff was entitled to the difference between the price actually paid by him, namely, $2,400 and the price which he would have paid for a 1953 model, namely $1,200.

Dicta of Lord Herschell in *Derry* v. *Peek* (2) at page 374 applied. *Oscar Chess Ltd.* v. *Williams* (1) distinguished.

Cases referred to:—

(1) *Oscar Chess Ltd.* v. *Williams* [1957] 1 All E.R. 325.

(2) *Derry* v. *Peek* (1889), 14 App. Cas. 337.

CIVIL SUIT.

M. Coomaraswamy for the plaintiff.

L. A. J. Smith for the defendants.

Cur. Adv. Vult.

Buttrose J.: This action arises out of the sale of a second-hand motor car by the defendants to the plaintiff under a hire-purchase agreement. The plaintiff claims damages for breach of the agreement by the defendants alternatively damages for fraudulent misrepresentation by the defendants in inducing the plaintiff to enter into it.

The position was that the defendants admitted that they represented that the motor car was a 1958 model and that it was not a 1958 model — it was in fact a 1953 model — but they denied that they knew it was not a 1958 model and that the said representation was made fraudulently or recklessly. They maintained that the representation was based upon an entry in the registration book to that effect and made with a *bona fide* belief in the truth thereof.

The first question which arises to be considered is whether the representation made by the defendants was a term of contract. The question is often expressed as being whether the words are to be interpreted as giving rise to a warranty.

The facts were that the plaintiff in October, 1960, about a month after his arrival in Singapore purchased a second-hand 1956 Fiat from the defendants. He experienced considerable trouble with it and soon afterwards approached the defendants with a view to effecting an exchange. He was shown a list of second-hand cars which, however, was not produced and referred to a salesman employed by the defendants and they had a discussion. The plaintiff indicated two Humber Hawks on the list in which he was interested and it appeared, though the evidence was somewhat vague as to this, that they were shown as 1957/1958 models. The salesman pointed to one of the Humber Hawks and said that was the car he recommended. The plaintiff referred to the trouble he had experienced with the Fiat and stated that he wanted a good car this time and the salesman said that he would see to it that the plaintiff was satisfied.

The plaintiff queried the price indicating that he did not want to pay as much as he had done for the Fiat and the Humber Hawk was more expensive to which the salesman replied that it was a much better and a much newer car. The plaintiff inspected the car with the salesman and they went for a run in it. On their return the plaintiff said that before he went any further in the matter he would require to see the log book to ascertain who the previous owners were and the log book was produced for his inspection. The plaintiff agreed to buy the car and signed a formal confirmation of purchase incompletely filled in and not signed by the defendants and subsequently on the 31st December, 1960, executed a hire-purchase agreement in respect of the